IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 582 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALUBHAI BECHARBHAI GOHIL

Versus

STATE OF GUJARAT

Appearance:

MR DHARMESH V SHAH for the Petitioner.

Mr.V.M.Pancholi, Additional PUBLIC PROSECUTOR,

for the respondents.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/02/2003

ORAL JUDGEMENT

The petitioner has challenged the externment order passed by the Sub Divisional Magistrate, Bhavnagar, dated 24th May, 2002, by which an externment order is passed against the petitioner in Externment Case No.8 of

2002. The aforesaid order is passed under Section 56(b) of the Bombay Police Act, 1951. By the impugned order, the petitioner is externed from Bhavnagar District as well as adjoining Districts, viz., Amreli, Junagadh, Surendranagar, Rajkot and Ahmedabad District (Rural), for a period of one year. The said order was challenged by the petitioner by way of appeal before the State Government. The State Government has rejected the said appeal by the order at Annexure 'B', dated 6.8.2002. Accordingly, the petitioner has challenged the said orders by way of this Special Civil Application.

Before passing the impugned order of externment, the petitioner was served with a show cause notice under Section 59 of the Act. The said notice is dated 29th January, 2002. In the aforesaid notice, particulars about four instances are given. It is stated in the said notice that somewhere about 8 months back, the petitioner had gone to the house of one person at night and demanded money and, thereafter, since his demand was not acceded to by the said person, the petitioner started beating him. The other case which is mentioned is that about 9 months back, the petitioner had gone to the house of one person and demanded money and, thereafter, started beating that person.

The next case mentioned is that about eight months back, in the evening, the petitioner had gone to one person and demanded money and, thereafter, when his demand was not acceded to, he started beating that person. The last case is also that the petitioner had gone to the business place of one person and demanded money and as his demand was refused by the aforesaid person, the petitioner started beating him. There is also a reference about four cases against the petitioner under various Sections of IPC. It is, therefore, mentioned in the show cause notice that, prima facie, it is found that the petitioner is a "dangerous person" and in order to curb his activities, it is decided to remove him from the Bhavnagar District and other adjoining Districts. The petitioner was asked to show cause as to why the orders contemplated under the aforesaid provision should not be passed against him.

The petitioner thereafter gave reply. The petitioner subsequently requested for examining the witnesses, who had deposed against the petitioner before the authority. However, that request was rejected by the authority by an order dated 23.5.2002. Thereafter, the impugned order dated 24.5.2002 was passed, by which he was externed for a period of one year from the aforesaid

Districts, as mentioned above in the earlier part of this order and the appellate authority has also confirmed the said order.

The learned Advocate for the petitioner submitted that the particulars of the four cases given in the show cause notice are absolutely vague. It is submitted that, without giving particulars in the notice, it is difficult for the petitioner to give effective reply. It is also submitted that the petitioner should have been permitted to cross-examine the witnesses so that the petitioner could have satisfied the authority that the witnesses have stated falsehood before the authority.

So far as the four cases mentioned in the order are concerned, the particulars of the four cases are incorporated in the show cause notice. In none of the said four cases, any exact date or at least month, is mentioned in the show cause notice, in any manner. Even if it is not possible for the authority to give exact date, at least specification of period was required to be given so that the petitioner can effectively give reply. Instead, in the show cause notice, mere vague particulars are given to the effect that somewhere 8 or 9 months back, the petitioner had done a particular act. Even exact location is also not given in the said grounds. It is required to be noted that Section 59 of the Bombay Police Act deals with the requirement of giving show cause notice. Section 59 reads as under :-

> " ... ...
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> 59. (1) Before an order under Section 55, 56 or 57 is passed against any person the officer acting under any of the said sections or any officer above the rank of an Inspector authorised by that officer shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them. If such person makes an application for the examination of any witness produced by him, the authority or officer concerned shall grant such application; and examine such witnesses unless for reasons to be recorded in writing, the authority or officer is of opinion that such application is made for the purpose of vexation or delay. Any written statement put in by such person

shall be filed with the record of the case. Such person shall be entitled to appear before the officer proceeding under this section by an advocate or attorney for the purpose of tendering his explanation and examining the witnesses produced by him.

(2) The authority or officer proceeding under sub-section (1) may, for the purpose of securing the attendance of any person against whom any order is proposed to be made under section 55, 56, or 57, require such person to appear before him, and to pass a security bond with or without sureties for such attendance during the inquiry. If the person fails to pass the security bond as required or fails to appear before the officer or authority during the inquiry, it shall be lawful to the officer or authority to proceed with the inquiry and thereupon such order as was proposed to be passed against him may be passed.

... ..."

It is required to be noted that issuance of a show cause notice is not a mere formality, which is required to be completed before passing the order. After receiving reply from the concerned person, the authority is required to apply its mind before passing the final order. Issuance of show cause notice is, therefore, a matter of substance and not a formality. Looking to the four instances cited in the show cause notice, in my view, it is impossible for anyone to give appropriate reply, because, in a very vague manner, the incidents are described. The authority at least should have given some particulars at least about particular month, in which the so-called incident had happened and should have given some better description of the area where the incident had happened. Mere allegation that, some 8 or 9 months back, at midnight, the petitioner had visited the house of someone, can never be said to be compliance with the requirement of giving particulars in the show cause notice. Even if the authority may not be supposed to give the exact date on which the aforesaid incident had happened, at least, the particular period and month, during which the incident had happened, at least is required to be given so that a person can give an effective reply. At the cost of repetition, it is stated

that the authority has not given the month during which the so-called act is committed by the petitioner. The notice in question, therefore, on the face of it, is absolutely vague.

In this connection, reference is required to be made to the Division Bench judgment of this Court in Rajput Ranjitsing Jatubha v. Vinay Vyas, Sub-Divisional Magistrate, Palanpur & Others, 1986(1) GLR 478. In the said judgment, this Court has observed as under :-

> " ... ...
>
> A mere look at the allegations shows that they suffer from the vice of vagueness viz. (i) no period is mentioned during which the alleged nefarious activities have been carried on by the petitioner and (ii) no area or location is shown where such activities are carried on. These infirmities must be treated to be fatal infirmities. It must, therefore, be held that the petitioner got no reasonable opportunity to show cause against the proposed externment on the allegations contained in the aforesaid show cause notice.
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> ... ..."

In the case of Babakhan alias Narsingh Gulammohamad Pathan v. The State of Gujarat, 1987-1 G.L.H. 176, a Division Bench of this Court has taken a view that if the show cause notice clearly alleges a particular area and if the period is specified, then such notice cannot be said to be vague. In paragraph 6, the Court has observed as under :-

> " ... ...
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> 6. In the present case, the show cause notice is not vague in respect of the period as well as the area. The show cause notice clearly alleges only one area i.e. Nava Yard area within the limits of Sayajiganj Police Station of Baroda. The period is also specified namely : since October, 1984 till the date of show cause notice i.e. 23.1.1985. Thus, on both the counts, the notice cannot be said to be vague and, therefore, this contention must

fail.

... ..."

So far as the facts in the instant case are concerned, even there is no specification of the particular area at all except mentioning that in the Valbhipur Police Station area, the petitioner had committed the aforesaid act. Even the period is not properly mentioned as to during which month the so-called incident had happened. So far as the present notice is concerned, therefore, on the face of it, it is absolutely vague and it is not possible for a person to give effective reply on the basis of such vague grounds mentioned in the show cause notice.

Learned Advocate for the petitioner also relied upon the decision in Dafer Rahman Zarar v. State of Gujarat & Ors., 1999(1) G.L.H. 425. This Court has observed as under in paragraphs 4 and 5 :-

" ... ...

4. Perusal of the show-cause notice, Annexure "A" shows that except three cases, two under IPC and one under Prohibition Act, all allegations are general in nature and vague in character. The typed copy of translation of show-cause notice shows that it runs into four pages but no where in the notice, the period and the area of operation of the petitioner has been disclosed. The effect of such non-disclosure in the show-cause notice was considered by the Division Bench of this Court in a case of Rajput Ranjitsing Jatuba v. Vinay Vyas, 1986(1) GLR 478. The Division Bench observed that a mere look at the allegations show that they suffer from the vice of vagueness, viz., (i) no period is mentioned during which the alleged nefarious activities have been carried on by the petitioner and (ii) no area or location is shown where such activities are carried on. These infirmities must be treated to be fatal infirmities. It was further observed that due to these infirmities the petitioner got no reasonable opportunity to show-cause against the proposed externment on the allegations contained in the show cause

notice. It further observed if the grounds are inoperative in law on account of vagueness, the entire proceedings emanating from them would fall through. Applying verdict of the Division Bench to the facts contained in show-cause notice, Annexure "A", it can safely be said that the notice is vague in as much as, it does not disclose the period and the area of petitioner's nefarious activities which has not only rendered the notice invalid but also rendered the impugned order invalid. as a result thereof, the impugned order of the Externing Authority cannot be maintained.

5. The notice, Annexure "A", is further vague inasmuch as in para 2 thereof various activities of the petitioner have been disclosed but no date, time, etc., so also place has been shown. It further appears that the Externing Authority has travelled beyond the allegations contained in the show-cause notice. In the Judgment the Externing Authority was influenced not only by two cases under Section 323, etc. of the Indian Penal Code, but also by four more cases viz. CR. Nos. 109/95, 123/95, 87/96 and 110/97. While mentioning these criminal cases against the petitioner in the show-cause notice, the Externing Authority did not disclose under which sections of the IPC these cases were registered against the petitioner, and further, since these cases were not shown in the show-cause notice the petitioner was prevented from presenting effective defence to the show-cause notice. This has rendered the order of the Externing Authority violative of principles of natural justice and it has also rendered the said order suffering from the vice of non-application of mind. This is another ground on which the impugned order of the Externing Authority cannot be sustained. The order of the Externing Authority further suffers from the vice of non-application of mind. When it is mentioned that earlier the offences have been registered and proved against the person though the aforesaid person is not

> stopping the aforesaid antisocial activities. In the show cause notice, it was mentioned that these cases are pending. There was no material before the Externing Authority that these offences were proved. On the other hand the order of the Externing Authority shows that the stand of the petitioner before him was that he was acquitted in two criminal cases under the IPC. In respect of this stand the Externing Authority made no efforts to ascertain whether those cases were pending or resulted in conviction or acquittal which again renders the order of the Externing Authority bad on account of non-application of mind to the material on record.
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> ... ..."

Considering the aforesaid aspect of the matter and considering the fact that the notice issued against the petitioner is an absolutely vague notice for not giving appropriate particulars in the notice, by which the petitioner is denied his right to give effective reply to the show cause notice, the order of externment passed by the Department is required to be set aside. As indicated above, the show cause notice is given for the purpose of giving appropriate explanation and not to complete mere formality of the Act.

Accordingly, the order of externment dated 24.5.2002, at Annexure 'A', passed by the Sub Divisional Magistrate, Bhavnagar, and the order passed by the appellate authority, vide order dated 6.8.2002, Annexure 'B', confirming the externment order and dismissing the appeal, are quashed and set aside. Rule is made absolute accordingly.

Direct service is permitted.

(P.B. Majmudar, J.)

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(apj)